

Zoning Board of Appeals Minutes 12/09/2015

MASHPEE ZONING BOARD OF APPEALS DECEMBER 9, 2015 MEETING MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, December 9, 2015, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Chairman, Jonathan D. Furbush, Vice Chairman, William A. Blaisdell, Board Members Ronald Bonvie, Richard Jodka, and Associate Members Scott Goldstein, Brad Pittsley and Jim Gould were present. Board Member, Dom DeBarros was absent.

PLEDGE OF ALLEGIANCE

NEW HEARINGS

68 Echo Road: Owner, Louis J. Seminara, Jr., requests a Minor Modification to (SP-2014-56) under §174-24 (9)C of the Zoning Bylaws to allow for building and parking modifications of an industrial warehouse building on property located in an I-1 Zoning District, (Map 19 Parcel 14), Mashpee MA.

Mr. Dan Ojala, of Down Cape Engineering represented the applicant for this project. The owner, Lou Seminara was also present. Mr. Ojala spoke to Tom Fudala at the Design/Review meeting and suggested he file for a minor modification. The modification will be a 0.6% increase at 60 square feet. The building will become shorter to provide for a loading dock. The parking and drainage plans are the same and will require controlled construction.

Mr. Furbush stated the plan needed to be updated as requested at the Design/Review Meeting. Mr. Seminara said the building will change from a 60 foot wide building to an 80 foot wide building, and 165 feet in length to 125 feet. The building plans were corrected as of 12/6/2015. The Board wanted to confirm that the interior doors and windows were correct, and that the rear elevation was correct. There is also sufficient lighting as noted on the plan.

Mr. Furbush read comments from the Inspection Department into the record; "The area is zoned I1. The applicant is seeking a Minor Modification, where they wish to change the width from 60' to 80' and the length from 165' to 125' and adjust the parking accordingly.

Mr. Furbush read the comments from Conservation; "Not in wetlands jurisdiction", and Board of Health comments; "Comments made at site plan review, please keep original comments from before as they still apply even though there are fewer leasable units. The potential uses are still the same."

Mr. Bonvie made a motion to issue a minor modification referencing a Site Plan, Detail Sheet, and Landscape Plan of #68 Echo Road, Mashpee, MA prepared for Louis Seminara Jr. Dated: November 11, 2015 by Down Cape Engineering, Inc.

Scale: 1" = 20' signed by Daniel A. Ojala, P.E., PLS, No. 46502 and No. 40980, DCE #14-258. Building plans; 68 Echo Road, Mashpee, MA prepared by Stefan Richman Design, phone: 508-280-5738, scale: 1/8" = 1', dated 8/18/14, rvsd. 9/24/14, rvsd. 12/6/15. Sheets 1 of 2 and 2 of 2. Mr. Bonvie amended his motion to include all the conditions from the prior decision, included, but not limited to the Board of Health comments and will be attached hereto. Referencing; Special Permit (SP-2014-56), Decision Recording; Bk. 28578 Page 162, dated 12/17/2014.

Mr. Blaisdell seconded, yes, Mr. Furbush, yes, Mr. Jodka, yes, and Mr. Goldstein, yes. All were in favor of the project, and determined the application is a minor modification to the 2014 Special Permit.

16 Westwood Road: Owners, Louis J. and Debra A. Columbo, Trustees, request a Written Finding under §174-17 of the Zoning Bylaws to raze and replace a single-family dwelling on property located in an R-3 Zoning and Popponeset Overlay District, (Map 117 Parcel 194), Mashpee, MA.

Mr. Kevin Kirrane represented the applicants for the raze and replace project. He provided the Board an outline narrative and photos of the

existing structure and similar structures in the neighborhood. The site is a 7,500 square foot corner lot. The existing dwelling was built in the early 1950s, and includes a deck and porch and is approximately 1,214 square feet. There is also a small shed consisting of 98 square feet. The total lot coverage on the site is 1,312 square feet, or 17.5% of the site.

The site is located in an R-3 Zoning District and in the Popponesset Overlay District. The front yard requirements are reduced from 40 feet to a front yard setback of 25 feet. The existing structure is non-conforming in two respects. The non-conformity relates to the front yard setback from Uncle Percy's Road which is 24.8 feet, therefore making it less than 5.5 feet, and is 8.8 feet from the Northeasterly property line, and 24.8' from Uncle Percy's Road. There are two front yards. In addition the current structure and use of the property is serviced by an antiquated cesspool, and part of the development plan for the site would be a new Title 5 septic system.

The new structure will be situated on the lot in a location that now results in all conforming setbacks. It will conform to the 25 ft. setback from Uncle Percy's Rd, and will conform to the 15 ft. foot rear or side yard setbacks on the Northeasterly property line. The structure is a little bigger than previously exists and will consist of 1,476 square feet, plus the shed which results in a total lot coverage of 19.7% and is still within the 20% lot coverage allowed under the provision of the bylaw.

The Board must determine that the proposed new structure is substantially less detrimental to the neighborhood than what currently exists. In addition, the site plan demonstrates that there is sufficient area to accommodate two parking spaces and conforming setbacks. The septic plan was submitted to the Conservation Commission.

Mr. Furbush read the Conservation Comments into the record; "property lies within the Flood Zone A requires permitting."

Mr. Bonvie asked the Chairman if bulkheads that have full foundations are part of lot coverage. Mr. Goldstein in his opinion stated that if there was living space above but in this case he doesn't see the need.

Mr. Goldstein asked if there were wetlands off of Westwood Road. He also asked how many bedrooms, and what will be the septic design. Mr. Kirrane said there will be two bedrooms but will be designed for 3 bedrooms.

Mr. Furbush read the Board of Health comments into the record; "the proposed septic has been approved and permit obtained by the installer. The floor plans have been reviewed and no comments are necessary.

Mr. Furbush read the Inspection Dept. comments into the record; "The area is zoned R3 and is in the Pre-contact Archaeology Sensitivity area – listed as "Moderate Sensitivity". The applicant is seeking a Written Finding under Article V §174-17 regarding a determination from the Board if the removal of the existing home and replacing it with a single family home would increase the non-conforming nature of the home.

Mr. Bonvie made a motion to approve the application with the following conditions;

- The Board has determined that the applicant meets all the conditions of a Written Finding under Mass General Law 40A Section 6.
- The area is zoned R3 and is in the Pre-contact Archaeology Sensitivity area – listed as "Moderate Sensitivity". The applicant must follow the instructions under bylaw Section 174-24 (C) 3.
- A Site Plan "Existing Conditions Plan" for 16 Westwood Rd, Mashpee, MA. Prepared for: Louis & Debra Columbo, 81 Chapel Street, Norwood, MA 02062. Engineering by: Engineering Works, Inc., Surveying by: Warner Surveying, Scale: 1" = 20', Drawn PTM, Job No: 206-15NH, Dated 11/10/15, Checked: PTM, Sheet 1 of 2. A Proposed Site Plan: for 16 Westwood Road, Mashpee, MA. Prepared for: Louis & Debra Columbo, 81 Chapel St., Norwood, MA. 02062. Engineering by: Engineering Works, Inc., Surveying by: Warner Surveying, Scale: 1" = 20', Drawn PTM, Job No.: 206-15NH, Job No: 206-15NH, Dated: 11/10/15, Checked PTM, Sheet 2 of 2.
- House Plans prepared by Your Plan Store, Alan B. Osgood, Residential Designer for Debra and Louis Columbo, 81 Chapel St., Norwood, MA 02062-1907, dated: 11/6/2015, Sheet No.: A-1 through A5.
- Conservation Commission approval required.
- Installation of drywells for roof drainage required.

Mr. Blaisdell, seconded, yes, Mr. Furbush, yes, Mr. Jodka, yes, and Mr. Goldstein, yes. All were in favor and determined the new single-family dwelling will become conforming than what exists today.

222 Wheeler Road: Owner, Robert W. Obrinsky requests a Variance under §174-28 and §174-31 of the Zoning By-laws for relief from lot

size and frontage requirements to deem lot buildable on property located in an R-5 Zoning District, (Map 49 Parcel 23), Mashpee, MA.

223 Wheeler Road: Owners, Robert W. Obrinsky, Luisa A. Simone, Rebecca A. Obrinsky & Jessica L. Obrinsky request a Variance under §174-28 and §174-31 of the Zoning By-laws for relief from lot size and frontage requirements to deem lot buildable on property located in an R-5 Zoning District, (Map 49 Parcel 35), Mashpee, MA.

227 Wheeler Road: Owners, M. Donald Whorton & Diana L. Obrinsky, Trustees of the Whorton-Obrinsky Trust, request a Variance under §174-28 and §174-31 of the Zoning By-laws for relief from lot size and frontage requirements to deem lot buildable on property located in an R-5 Zoning District, (Map 49 Parcel 34), Mashpee, MA.

231 Wheeler Road: Owners, M. Donald Whorton & Diana L. Obrinsky, Trustees-Whorton-Obrinsky Trust, Matthew R. Whorton and Julie H. Whorton request a Variance under §174-28 and §174-31 of the Zoning By-laws for relief from lot size and frontage requirements to deem lot buildable on property located in an R-5 Zoning District, (Map 49 Parcel 33), Mashpee, MA.

Mr. Kevin Kirrane represented the applicants for the Variance requests. He provided the Board with a narrative of the petitions, and photographs that show these are largely wooded lots. One is on the pond, and the other three are across the street. There are four non-conforming lots, three are on the easterly side of Wheeler Road, and are adjacent to another and all are owned by various members of the Obrinsky family.

There is also one lot on the westerly side of Wheeler Road, and is adjacent to a developed lot that was also owned by the Obrinsky family. The three contiguous lots consist of 11,250 square feet and have 75 ft. of frontage. The stand-alone lot has 14,700 sq. feet and 75 ft. of frontage on Wheeler Road. The Board is aware that all these lots are situated in the R-5 Zoning District and as a result had a number of changes to the bylaws during the late 80's and early 90's, which currently requires 80,000 sq. ft. and 150 ft. of frontage in order to be a buildable lot.

The three contiguous undeveloped lots were subject matter of two separate variances on each lot granted by the ZBA in 2006, and when discovered the variances had expired, they requested the same variance relief in 2008 and was granted. All the lots were created by a sub-division dating back to 1965. At the time, the bylaws may have required 7,500 square feet of area and 75 ft. of frontage.

Prior to 1988 all these lots were grand-fathered, which stated that any lot that was approved by a sub-division and shown on a plan that was recorded at the Barnstable County Registry of Deeds, the lot was grandfathered.

The bylaw was changed in 1988 at which time the Town Planner imposed a condition that if there were two or three adjoining non-conforming lots, those lots could be built upon provided the lots contained 10,000 sq. ft. and 75 ft. of frontage.

As a result of the 1988 zoning change, all three of those lots on the easterly side of Wheeler Road, and the lot on the westerly side were protected under the Town's grandfather clause. In May of 1990, the Town Planner changed the grand-father clause and simply included a provision in the bylaw stating that lots were grandfathered as allowed under Chapter 40A Section 6. That grandfather clause effectively removed the grandfather protection because they were contiguously held, and the bylaw relative to acreage had changed a number of times from the 7,500 by the time it got up to 60,000. Any protection was no longer available.

The Town continued to tax and access these lots as building lots. A stand-alone undeveloped lot is currently accessed at \$242,800, and each of the adjoining lots are \$123,650. Since the year 2000, the Obrinsky family has paid a total of \$68,378.80 in taxes on these lots. These lots are similar in size and frontage to other lots in the neighborhood and are the few undeveloped lots in the neighborhood.

Mr. Furbush read a memo from the Town Planner dated November 20, 2015; "The 4 proposed lot size and frontage variances are illegal for the same reason cited regarding 110 Wheeler Road."

Mr. Kirrane said the Board has the discretion to vote however it wishes and if challenged then the decision of the Board can be upheld or denied. But any decision the Board makes should not be considered illegal.

Mr. Furbush read the Inspection Department; "**222 Wheeler Road:** The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as "High Sensitivity". Seeking a Variance, from Table §174-31, for being short 75 feet of frontage (need 150 feet) and short 65,300 sq. feet of lot size (80,000 required).

223 Wheeler Road: The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as "High Sensitivity". Seeking a Variance, from Table §174-31, for the being short 75 feet of frontage (need 150 feet) and short 68,750 sq. feet of lot size (80,000 required).

227 Wheeler Road: The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as “High Sensitivity”. Seeking a Variance, from Table §174-31, for the being short 75 feet of frontage (need 150 feet) and short 68,750 sq. feet of lot size (80,000 required).

231 Wheeler Road: The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as “High Sensitivity”. Seeking a Variance, from Table §174-31, for the being short 75 feet of frontage (need 150 feet) and short 68,750 sq. feet of lot size (80,000 required).

Jon read the Conservation Dept. comments into the record; “222 Wheeler Road; lot lies within wetlands jurisdiction-Inland Bank and pond front-any development triggers permitting review.” 223, 227, and 231 is not in the wetlands jurisdiction.

Jon read the Board of Health comments into the record; “222, 223, 227, and 231 Wheeler Road. The property is not in Zone II, therefore, it is not restricted on number of bedrooms. A denite septic system will be required if 6 or more bedrooms are requested.”

The Board read a letter dated November 20, 2015 from Owner, Robert Obrinsky giving a family history.

Mr. Richard Abbott, an abutter located at 218 Wheeler Road, was told that the 222 Wheeler Road lot would remain unbuildable as told by their Realtor when they purchased their house.

Mr. Albert Orlando, an abutter located at 240 Wheeler Road, does not want to see a house built on 222 Wheeler Road.

Mr. Gary Degon, an abutter located at 239 Wheeler Road, does not want to see a house built on 222 Wheeler Road.

222 Wheeler Road: The Board voted as follows; Brad Pittsley, in favor, Mr. Jodka, in favor, Mr. Bonvie, against, Mr. Blaisdell, in favor, and Mr. Furbush, against. The petition for a Variance did not pass because four positive votes are required for a petition to pass.

223 Wheeler Road: The Board voted as follows; Mr. Blaisdell, in favor, Mr. Jodka, in favor, Mr. Gould, in favor, Mr. Bonvie, against, and Mr. Furbush, against. The petition for a Variance did not pass because four positive votes are required for a petition to pass.

227 Wheeler Road: The Board voted as follows; Mr. Blaisdell, in favor, Mr. Jodka, in favor, Mr. Goldstein, in favor, Mr. Furbush, against, and Mr. Bonvie, against. The petition for a Variance did not pass because four positive votes are required for a petition to pass.

231 Wheeler Road: The Board voted as follows; Mr. Blaisdell, in favor, Mr. Jodka, in favor, Mr. Pittsley, in favor, Mr. Furbush, against, and Mr. Bonvie, against. The petition for a Variance did not pass because four positive votes are required for a petition to pass.

OTHER BUSINESS

The Board approved the November 18, 2015 meeting minutes. All were in favor.

Respectfully submitted,

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals